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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,959	06/27/2003	David F. Nicoli	034515-001	4840

21839 7590 11/09/2005

BUCHANAN INGERSOLL PC  
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EXAMINER
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WALLENHORST, MAUREEN

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/606,959	<b>Applicant(s)</b> NICOLI ET AL.	
	<b>Examiner</b> Maureen M. Wallenhorst	<b>Art Unit</b> 1743	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: none.
- Claim(s) objected to: none.
- Claim(s) rejected: 1-77.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 10/21/05
13. ☐ Other: \_\_\_\_\_.

*Maureen M. Wallenhorst*

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GROUP 1700

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Art Unit: 1743

Continuation of 3. NOTE: The recitation of detecting an increase in the rate of particle agglomeration as a measure of the stability of a dispersion is a new issue not previously considered or searched.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that the references to Garver et al and Nicoli et al fail to teach of detecting an increase in the rate of particle agglomeration as a measure of the stability of a dispersion or emulsion. In response to this argument, it is noted that this amendment represents a new issue not previously considered before, as noted above. However, it is noted that "rate" is defined as the quantity, amount or degree of something measured per unit of something else. Figure 4 in the Nicoli et al reference measures the rate of particle agglomeration in a fat emulsion since this figure measures the concentration of different sizes of particles in a fat emulsion per unit time (i.e. as a function of time). Rate inherently refers to how fast something occurs over time. Nicoli et al teach of measuring the stability of emulsions and dispersions, and stability is a measure of how long a composition remains resistant to chemical change. According to the reference to Parfitt submitted in the Information Disclosure Statement filed on October 21, 2005, the stability of a colloidal dispersion is defined as no change in the total number of particles in the dispersion with time. The total number of particles in the dispersion can change over time by particle agglomeration or flocculation. Therefore, the stability of a dispersion or emulsion is inherently measured over time. It would have been obvious to one of ordinary skill in the art to measure the rate of particle agglomeration, as disclosed by Nicoli et al in Figure 4, over an extended period of time or at multiple different time points after formulation of the dispersion or emulsion since Nicoli et al teach of measuring the stability of dispersions as a function of time by measuring particle agglomeration, and the stability of a composition is inherently measured over an extended period of time.